IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

Crl.MC.No. 251 of 2007()

AGAINST THE ORDER DATED 17/01/2007 IN ORDER IN CMP.197/2007 of JUDL.MAGISTRATE OF FIRST CLASS-I, THAMARASSERY CRIME NO.588/06 OF THE THAMARASSERY POLICE STATION.

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PETITIONER: ACCUSED NO.1

SUBAIR, S/O. ABDURAHIMAN,
AGED 27 YEARS, PARATHODIKA HOUSE,
VELLERMALA AMSOM.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: COMPLAINANT:

STATE OF KERALA, THROUGH THE
SUB INSPECTOR OF POLICE, THAMARASSERY
POLICE STATION, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI. S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 251 OF 2007

Dated this the 1st day of February, 2007

ORDER

The petitioner has come to this Court with a prayer to invoke the powers under Sec.482 of the Cr.P.C. to ensure his release from custody. He faces indictment in a prosecution, inter alia, under Secs.406 and 498A of the IPC. He was arrested and detained in custody. He applied for bail. The learned Magistrate directed release of the petitioner on bail subject to conditions. Inter alia, a condition was imposed on the petitioner that he must deposit the entire amount of maintenance due to the de facto complainant – his wife, before the Family Court. The impugned order was passed on 17/1/07. The petitioner is in custody. He is unable to raise the amount. In these circumstances, he is constrained to continue in custody. In these circumstances, the short prayer that is made before me is that the said condition may be deleted or, at least, modified to ensure that the petitioner is able to come out of prison and attempt to discharge his liability.

2. The jurisdiction which is sought to be invoked is the one under Sec.482 of the Cr.P.C. Has justice failed? Is there miscarriage of justice? This is the crucial consideration in a petition under Sec.482 of the Cr.P.C. I find that the learned Magistrate has done nothing wrong which requires interference invoking the powers under Sec.482 of the Cr.P.C. in directing payment of the amount. However, I am satisfied that the petitioner can be given time after his release from custody to pay such amount.

3. In the result:

(a) This petition is allowed in part.

(b) The condition that the petitioner must deposit the entire maintenance amount and produce the receipt from the Family Court in order to secure his release is modified.

(c) It is directed that the petitioner shall be released from custody if he satisfies the other conditions imposed on him and deposits an amount of Rs.10,000/- before his release before the Family Court and produces the receipt.

(d) It is further directed that he must deposit the entire

balance amount within a period of four months in four equal monthly instalments, the first of which will be paid on 1/3/2007.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge